

Claimant alleges accidental injury on June 27, 2000, while working as a truck driver for respondent, Legacy Transport, LLC. This accidental injury occurred in Urbana, Illinois, while claimant was unloading pallets. As he moved an empty pallet, claimant felt a pop and a sharp pain in his back with pain radiating down his leg. Claimant continued working for respondent, but the problems with his back continued to worsen. By July 7, 2000, claimant was forced to seek medical treatment with Richard A. Gellender, D.O., in Pittsburg, Kansas. After his medical examination, claimant called respondent and advised them of his back injury in Urbana.

Respondent provides no evidence to contradict the claimant's description of the accident. Additionally, Brian K. Ellefson, D.O., of Carthage, Missouri, who examined claimant on September 11, 2000, found claimant's ongoing problems to be a direct result of his work-related injuries of June 27, 2000.

The Appeals Board finds the evidence supports claimant's contention that he suffered accidental injury arising out of and in the course of his employment with respondent Legacy Transport, LLC.

Respondent contends claimant is not subject to the Kansas Workers Compensation Act as his injuries did not occur in Kansas and respondent did not hire claimant in Kansas. Respondent's brief argues extensively about the events leading up to claimant's hire with Forcum Truck Lines, Inc. However, claimant's injury occurred while working for Legacy, rather than Forcum. It is clear from the record that the two companies are owned by the same employer. However, Linda Martinsen, respondent's office manager, testified that the two companies are separate corporations.

Claimant testified at length and respondent presented substantial evidence regarding the events which led up to claimant's hire with Forcum. However, claimant's transfer from Forcum to Legacy is dealt with very sparingly in the record. Ms. Martinsen testified that claimant requested a transfer from Forcum to Legacy because he wanted to limit his hours and also limit the distance he traveled. Forcum covered the entire continental United States, including all 48 states. Legacy, however, was limited to a territory encompassing only 17 Mid-West states. Claimant testified his route with Legacy included only Oklahoma, Missouri, Indiana and Illinois.

Claimant testified that his transfer from Forcum to Legacy occurred as a result of a telephone conversation between him and respondent owner. Claimant stated he was in his kitchen in Pittsburg, Kansas, when he received a phone call from the owner of the companies. During that conversation, claimant was offered the opportunity to work for Legacy, and he accepted that offer. Claimant's testimony that he was standing in his kitchen in Pittsburg, Kansas, at the time this conversation occurred is uncontradicted in the record.

A basic principle of contract law is that a contract is "made" when and where the last act necessary for its formation is done. Smith v. McBride & Dehmer Construction Co., 216 Kan. 76, 530 P.2d 1222 (1975). When that act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance. Morrison v. Hurst Drilling Co., 212 Kan. 706, 512 P.2d 438 (1973); see Restatement (Second) of Contracts § 64, Comment c (1974); Shehane v. Station Casino, 27 Kan. App. 2d 257, 3 P.3d 551 (2000). In this instance, the acceptance of the offer to transfer to Legacy was made by claimant while he stood in his kitchen in Pittsburg, Kansas. Under K.S.A. 44-506, the provisions of the Workers Compensation Act in Kansas shall

apply to injuries sustained outside the state where (1) the principal place of employment is within the state or (2) the contract of employment was made within the state, unless the contract otherwise specifies.

Claimant's testimony that he accepted the transfer from Forcum to Legacy while standing in his kitchen in Pittsburg, Kansas, is uncontradicted. Respondent's representative, Linda Martinsen, was unable to testify about what occurred when claimant switched from Forcum to Legacy. The Appeals Board, therefore, finds claimant has proven that the contract of employment in this instance occurred while claimant was in Pittsburg, Kansas, and the last act necessary to finalize that contract was performed by claimant during that telephone conversation. Therefore, the Kansas Workers Compensation Act does apply to this instance, and the Order of the Administrative Law Judge, awarding claimant medical treatment through Dr. Yost, is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated November 13, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2001.

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BOARD MEMBER

c: William L. Phalen, Pittsburg, KS  
Garry W. Lassman, Pittsburg, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director